

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

DAVID R. LEWALSKI

CASE NO. **8:10-CR-501-T-27MAP**
18 U.S.C. § 1349
18 U.S.C. § 1341
18 U.S.C. § 1343
18 U.S.C. § 981(a)(1)(C) - Forfeiture
28 U.S.C. § 2461(c) - Forfeiture

INDICTMENT

The Grand Jury charges:

COUNT ONE
CONSPIRACY TO COMMIT MAIL AND WIRE FRAUD

A. Introduction

At all times material to this Indictment:

1. Botfly, LLC (hereinafter "Botfly") was a Florida limited liability company incorporated on or about September 13, 2005, with a principal place of business at 12709 Clocktower Parkway, Bayonet Point, FL 34667, in the Middle District of Florida.

The conspirators represented that Botfly was in the business of foreign currency trading

WHEN IN
~~in when~~ fact, Botfly used only a small percentage of investor money for trading.

2. DAVID R. LEWALSKI was the founder, purported principal trader, and promoter of Botfly who operated a scheme to defraud victim investors by claiming he could generate returns of up to 10% per month by trading on the foreign currency market, when in fact he operated a Ponzi scheme and paid victim investors with other victim investors' funds.

3. The foreign exchange ("forex") market is a worldwide decentralized market for the trading of currencies. The primary purpose of the forex market is to assist international trade and investment by permitting businesses to convert one currency to another.

B. The Conspiracy

4. Beginning at least in or around September 2005, and continuing through at least on or about November 4, 2010, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

did knowingly and willfully combine, conspire, confederate, and agree with others, both known and unknown to the Grand Jury, to commit certain offenses, to wit:

a. execute and attempt to execute a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, by utilizing the United States mail and private and commercial interstate carriers, for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1341; and

b. execute and attempt to execute a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, by transmitting and causing to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

C. Manner and Means of the Conspiracy

5. The manner and means by which the conspirators sought to accomplish the objects and purposes of the conspiracy included, among other things, the following:

a. It was part of the conspiracy that the conspirators would and did represent to victim investors that they could generate returns on victim investor funds of up to 10% per month by trading their funds in the forex market.

b. It was further part of the conspiracy that the conspirators would and did give victim investors promissory notes containing material false statements, to wit, that the victim investors would receive, in most instances, a 10% return on their investments per month and that Botfly would repay the balance owed on the notes within 14 days of receiving written notice.

c. It was further a part of the conspiracy that the conspirators would and did establish a website, Botflyllc.com, and provide victim investors with a log in and password. The website would display monthly statements for victim investors that purported to show the victim investors' supposed accrual of investment returns each month.

d. It was further part of the conspiracy that the conspirators would and did keep the majority of victim investor funds in domestic bank accounts to pay other victim investors and to enrich themselves, rather than transferring the funds to forex trading accounts, as promised.

e. It was further part of the conspiracy that when victim investors would request disbursements of the supposed returns accruing to their accounts, the conspirators would and did pay victim investors with other victim investors' money,

thereby creating the illusion that the fraudulent investment program was a solvent, profit generating enterprise earning actual returns.

f. It was further part of the conspiracy that the conspirators would and did use Botfly victim investor monies to spend lavishly on themselves and their associates for such things as high end real estate, private jet travel, luxury automobiles, designer clothing, and jewelry.

g. It was further part of the conspiracy that the conspirators would and did conceal, misrepresent, and hide, and cause to be concealed, misrepresented, and hidden, the purpose of acts performed in furtherance of the conspiracy.

All in violation of Title 18, United States Code, Section 1349.

COUNT TWO
MAIL FRAUD

A. Introduction

Paragraphs 1 through 3 of Part A of Count One of this Indictment, Introduction, are realleged and incorporated by reference as if fully set forth herein.

B. Scheme

From at least in or about September 2005, and continuing until at least on or about November 4, 2010, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

did knowingly devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises.

C. Manner and Means of the Scheme

The substance of the scheme and artifice is set forth in Part C of Count One of this Indictment, Manner and Means of the Conspiracy, the allegations of which are realleged and incorporated by reference as if fully set forth herein.

D. Mailing

On or about March 11, 2009, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

for the purpose of executing the aforementioned scheme and artifice and attempting to do so, caused to be delivered by U.S. Mail according to the direction thereon, an envelope containing a promissory note, which was mailed from Botfly, LLC, to investor A.P. in Tarpon Springs, Florida.

In violation of Title 18, United States Code, Section 1341.

COUNTS THREE AND FOUR
WIRE FRAUD

A. Introduction

Paragraphs 1 through 3 of Part A of Count One of this Indictment, Introduction, are realleged and incorporated by reference as if fully set forth herein.

B. Scheme

From at least in or about September 2005, and continuing until at least on or about November 4, 2010, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

did knowingly devise and intend to devise a scheme and artifice to defraud and for

obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises.

C. Manner and Means of the Scheme

The substance of the scheme and artifice is set forth in Part C of Count One of this Indictment, Manner and Means of the Conspiracy, the allegations of which are realleged and incorporated by reference as if fully set forth herein.

D. INTERSTATE WIRE TRANSMISSIONS

On or about the dates listed below, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

for the purpose of executing the aforementioned scheme and artifice and attempting to do so, transmitted and caused to be transmitted by wire in interstate commerce the following:

| COUNT | DATE | TRANSACTION | FROM | TO |
|-------|---------|--|-------------------------------------|--|
| THREE | 1/3/07 | email with subject "Statement" | David Lewalski at Lewalski@aol.com | Investor M.C.'s Yahoo! email account |
| FOUR | 2/28/09 | email with subject: "Forex investment" | Jon Hammill at jonhammill@yahoo.com | Investor A.P.'s America Online email account |

In violation of Title 18, United States Code, Section 1343.

FORFEITURE

1. The allegations contained in Counts One through Four of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. From his engagement in the violations alleged in Counts One through Four of this Indictment, defendant DAVID R. LEWALSKI shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all of his interest in any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations.

3. If any of the property described above, as a result of any act or omission of the defendant:

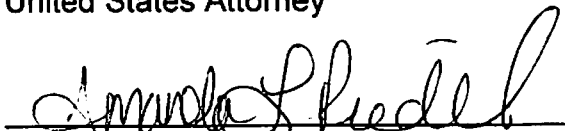
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty, the United States of America shall be entitled to forfeiture of substitute property under


the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL,

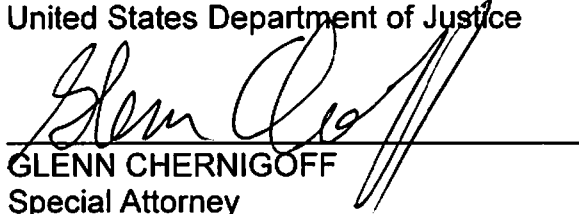

Foreperson

ROBERT E. O'NEILL
United States Attorney

By: 
AMANDA L. RIEDEL
Assistant United States Attorney

By: 
ROBERT T. MONK
Assistant United States Attorney
Deputy Chief, Economic Crimes Section

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United States Department of Justice

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GLENN CHERNIGOFF
Special Attorney
Criminal Division, Fraud Section
U.S. Department of Justice

FORM OBD-34
APR 1991

No.

UNITED STATES DISTRICT COURT

Middle District of Florida
Tampa Division

THE UNITED STATES OF AMERICA

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MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

INDICTMENT

Violations:

18 U.S.C. §§ 1349, 1341, and 1343

A true bill,


Foreperson

Filed in open court this 1st day

of December, 2010.

Clerk

Bail \$ _____